Supreme Court, U.S.
FILED

(1)

No. 03-452 JUL 21 2003

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

AGWU NWOKE,

Petitioner,

v.

SANDRA BENNEWITZ,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Agwu Nwoke
(Pro Se)
522 Alcott Lane
Bolingbrook, IL 60440
Phone: 630-679-1567

HAPP

QUESTIONS PRESENTED

1. Whether Agwu Nwoke's Complaint, states a cause of action.

2. Whether a federal district court has jurisdiction over the Complaint.

3. Whether *collateral estoppel* bars Agwu Nwoke's suit in federal court.

PARTIES TO THE PROCEEDING

The parties to the proceedings in the United States Court of Appeals for the Seventh Circuit were:
(a) Petitioner, Agwu Nwoke, a private person; and
(b) Respondent, Sandra Bennewitz, an Assistant Public Defender in Cook County, Illinois.

Agwu Nwoke represented himself. Sandra Bennewitz was represented by the Assistant State's Attorney of Cook County, Illinois.

No publicly held company owns 10% or more of Agwu Nwoke's stock.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Agwu Nwoke, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit, in this case.

OPINIONS OR ORDERS BELOW

A copy of the order of the United States Court of Appeals for the Seventh Circuit, is included in the Appendix.

The judgment of the federal district court is also included in the Appendix.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit, was issued on April 23, 2003. This Court has jurisdiction over the petition pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

On December 08, 1998, Agwu Nwoke was indicted by a Cook County Grand Jury # 128, with respect to Case No. 98 CR 31321, for Physician License Violation. Ms. Sandra Bennewitz, an assistant public defender, was appointed by a Cook County Circuit Court, to represent Agwu Nwoke in the case. During the discovery phase of the case, the office of the Illinois Attorney General handed over some *documents* to Sandra Bennewitz. Some of those documents included two *patient* files containing the medical notes of two undercover police officers who purportedly visited a medical clinic. The prosecution alleged that Agwu Nwoke provided medical care to the two undercover police officers at the clinic. The two police officers allegedly used undercover names to visit the clinic. On May 09, 1997, Cleotha Jones, a sergeant in the Illinois State Police, swore an affidavit before a notary public. In the affidavit, Cleotha Jones stated that Cleotha Jones and one Ray Lewis visited the medical clinic to receive medical treatment, using the undercover names of *Randy Jones* and *Edward Johnson* respectively. On December 08, 1998, Cleotha Jones testified before the Cook County Grand Jury # 128. In the testimony, Cleotha Jones stated that Cleotha Jones executed a search warrant at the medical clinic and recovered medical notes, portions of which (Cleotha Jones claimed) were written by Agwu Nwoke for Cleotha Jones and Ray Lewis. The *documents (patient files)* which were handed over to Ms. Bennewitz by the Illinois Attorney General, were copies of the files of Randy Jones and Edward Johnson. Those were also the files, which Cleotha Jones claimed he (Cleotha Jones) recovered during the execution of the warrant.

On December 27, 2000, Agwu Nwoke attended a meeting at the office of Ms. Bennewitz. In the course of the

meeting, Ms. Bennewitz showed Agwu Nwoke, copies of the files of Randy Jones and Edward Johnson. On January 03, 2001, Agwu Nwoke wrote a letter to Sandra Bennewitz, requesting Sandra Bennewitz to hand over to Agwu Nwoke, photocopies of the files of Randy Jones and Edward Johnson. Ms. Bennewitz refused to hand over the copies to Agwu Nwoke.

On September 30, 2002, Agwu Nwoke filed a Complaint against Ms. Bennewitz, at the United States District Court, Chicago. In the Complaint, Agwu Nwoke alleged that Ms. Bennewitz violated Agwu Nwoke's civil rights, by refusing to hand over the files of Randy Jones and Edward Johnson, to Agwu Nwoke. On January 15, 2003, Judge Elaine Bucklo dismissed Agwu Nwoke's Complaint. Agwu Nwoke filed a timely notice of appeal on January 21, 2003.

On March 20, 2003, Sandra Bennewitz filed a motion in the United States Court of Appeals, to dismiss Agwu Nwoke's appeal. In the motion, Sandra Bennewitz argued that, since an Illinois State court had earlier dismissed a similar case filed by Agwu Nwoke against Ms. Bennewitz in the state court, collateral estoppel barred the suit in federal court. On April 23, 2003, the United States Court of Appeals for the Seventh Circuit, summarily affirmed the judgment of the federal district court.

REASONS FOR GRANTING THE PETITION

725 ILCS 5/114-13, Discovery in criminal cases, states: "Discovery procedures in criminal cases shall be in accordance with Supreme Court Rules". The Illinois Supreme Court Rules are written, pursuant to a statute.

The last sentence of **Illinois State Supreme Court Rule 412(a)** states:

> "If the State has obtained from the defendant, pursuant to rule 413 (d), information regarding defenses the defendant intends to make, it shall provide to defendant not less than 7 days before the date set for the hearing or trial, or at such other time as the court may direct, the names and addresses of the witnesses the state intends to call in rebuttal, together with the information required to be disclosed in connection with other witnesses by subdivisions (i), (iii), and (vi), above, and a specific statement as to the substance of the testimony such witnesses will give at the trial of the cause".

The last paragraph of **Illinois Supreme Court Rule 412 (Committee Comments),** states:

> "Paragraph (j), subparagraph (iii). While a defendant has a constitutional right to information which tends to negate his guilt or mitigate his punishment (*Brady v. Maryland,* 373 U.S. 83 (1963)), and to be confronted with the witnesses against him (*Jencks v. United States,* 353 U.S. 657 (1957)), and to any other information the withholding of which might violate his constitutional rights, he has no such right to information which does not affect his constitutional rights. This subparagraph, therefore permits nondisclosure if disclosure would involve a substantial risk of grave prejudice to national security,

> and if such nondisclosure does not violate a constitutional right of the defendant. If the State intends to use the information or material at trial, it should be disclosed to defendant prior to trial unless the State obtains a protective order delaying disclosure".

Illinois Supreme Court Rule 415(c) directs that

> "Any materials furnished to an attorney pursuant to these rules shall remain in his exclusive custody and be used only for the purposes of conducting his side of the case, and shall be subject to such other terms and conditions as the court may provide".

However, a defendant shall be provided with discovery materials, within seven days of a hearing or trial, pursuant to Illinois Supreme Court Rule 412(a). In conformity with Rule 412(a), Ms. Bennewitz, on March 07, 2001, provided Agwu Nwoke with a copy of an affidavit sworn by one Queen Brown. Queen Brown was cooperating with the prosecution with respect to Case No. 98 CR 31321. The last sentence of Rule 412(a) states unambiguously that a defendant is entitled to discovery material on or before the seventh day prior to a hearing or trial.

On August 07, 2000, Ms. Bennewitz sent to Agwu Nwoke, a copy of a *plea agreement* of one Ibeabuchi Asonye, who was cooperating with the prosecution with respect to Case No. 98 CR 31321. It is thus obvious that Ms. Bennewitz ignored Rule 415(c) when it was convenient for her, and she violated the last sentence of Rule 412(a) when it suited her purpose. The Illinois State Supreme Court Rule 415(c) does not prohibit any defense counsel from tendering the discovery materials to an accused person within seven days of a hearing or trial. What the Illinois State Supreme Court Rule 415(c) prohibits, is for a defense counsel to tender the discovery materials to members of the public. In this regard,

Ms. Bennewitz is well aware that throughout the course of Case No. 98 CR 31321, Agwu Nwoke never showed or tendered any discovery materials (related to the criminal case) to any member of the public. On January 22, 2001, Ms. Bennewitz asked Judge Porter to explain the "Supreme Court Rule" to Agwu Nwoke. Judge Porter said: "the discovery is for your lawyer, not for you". (Appendix, page 20a). Agwu Nwoke did not request anyone to explain the Supreme Court Rules to Agwu Nwoke. The last sentence of Rule 412(a) is in stark contradiction to Judge Porter's explanation. Besides, the last sentence of Rule 412 (Committee Comments), which states that the State should disclose discovery materials to a defendant prior to trial, is at odds with Judge Porter's explanation. No motion was filed by the prosecution, on January 22, 2001, in Case No. 98 CR 31321, moving the court to enter a protective order delaying disclosure. Furthermore, the court in Case No. 98 CR 31321 did not, on its own motion, enter an order with respect to any discovery question on January 22, 2001.

Section 745 ILCS 19/5 provides as follows:

> **"§ 5. Immunity.** No public defender, assistant public defender, appellate defender, or assistant appellate defender, acting within the scope of his or her employment or contract, nor any person or entity employing, supervising, assisting, or contracting for the services of a public defender, assistant public defender, appellate defender, or assistant appellate defender, is liable for any damages in tort, contract, or otherwise, in which the plaintiff seeks damages by reason of legal or professional malpractice, except for willful and wanton misconduct".

Agwu Nwoke did not file a civil suit against Ms. Bennewitz, for an ineffective legal representation. Agwu Nwoke never expected an effective legal representation from Ms.

Bennewitz in any case. Agwu Nwoke filed a civil suit against Ms. Bennewitz for willful and wanton misconduct; withholding evidence from Agwu Nwoke, when the said piece of evidence had been handed over to Ms. Bennewitz by the office of the Illinois State Attorney General. Agwu Nwoke's civil suit (02C 6971) did not center on legal malpractice. Rather, the lawsuit (02C 6971) revolved around intentional tort. There was a breach of duty on the part of Ms. Bennewitz. [The last sentence of Supreme Court Rule 412(a)]. Agwu Nwoke needed all the documents tendered by the office of the Illinois State Attorney General with respect to Case No. 98 CR 31321, to be able to ascertain the extent of breach of duty by Ms. Bennewitz.

Ms. Bennewitz had a duty to provide Agwu Nwoke, copies of specific files or charts, because the last sentence of Supreme Court Rule 412(a) states that the State shall disclose discovery material to a defendant on or before the seventh day prior to the hearing or trial, and the last sentence of Rule 412 (Committee Comments) states that the State should disclose discovery material to a defendant prior to trial. The State did provide copies of specific charts/files to Ms. Bennewitz for onward transmission to Agwu Nwoke, as described by the following: (a) On January 22, 2001, Mr. Paul Passolano, who was one of the attorneys for the prosecution in Case No. 98 CR 31321, told the court that the office of the Illinois Attorney General had "responded to everything that Ms. Bennewitz had asked for in the past". [Appendix, page 20a] (b) On March 07, 2001, Ms. Bennewitz gave Agwu Nwoke, a copy of an affidavit sworn by one Queen Brown. Queen Brown was cooperating with the prosecution with respect to Case No. 98 CR 31321. (c) On August 07, 2000, Ms. Bennewitz sent to Agwu Nwoke, a copy of a plea agreement of one Ibeabuchi Asonye, who was cooperating with the prosecution with respect to Case No. 98

CR 31321. A defendant in a criminal case needs the relevant discovery materials during the criminal proceedings, and even after the criminal case has been disposed of. A civil suit with regard to prosecutorial misconduct or fabrication of evidence by the police, can not be successfully litigated without access to discovery materials.

Federal Question

Sandra Bennewitz was a Cook County employee at the time Bennewitz committed the act alleged in the Complaint. Sandra Bennewitz acted under the appearance of authority bestowed upon Bennewitz (as a public defender) by the County of Cook, Illinois; and Sandra Bennewitz deprived Agwu Nwoke of rights protected by 725 ILCS 5/114-13 and Illinois Supreme Court Rule 412(a).

Collateral Estoppel

In Illinois, a judgment is considered final for purposes of collateral estoppel when a court "determines the litigation on the merits so that if affirmed the only thing remaining is to proceed with the execution of the judgment." *Clark,* 50 Fed. Apprx. 758, 759, quoting *Relph v. Bd. of Educ. Of DePue United Sch. Dist. No. 103,* 84 Ill.2d 436, 441; 420 N.E.2d 147, 149 (Ill. 1981).

In view of the fact that Agwu Nwoke's Complaint in an Illinois State court, stated a cause of action, the civil suit filed by Nwoke against Bennewitz in the Illinois State court, was not litigated on the merits. Furthermore, "under the Rooker-Feldman doctrine, federal court is precluded from considering federal claim alleging injury caused by state

court judgment, but not federal claim alleging prior injury that the state failed to remedy." *Long v. Shorebank Dev. Corporation,* 182 F.3d 548, 549 (7th Circuit 1999). In the case before the federal district court (No. 02C 6971), Nwoke alleges prior injury that the state trial court failed to remedy.

CONCLUSION

Based upon the foregoing facts, and the Illinois Supreme Court Rules cited in this petition, it can be concluded that Sandra Bennewitz was obligated to provide Agwu Nwoke with the files of Randy Jones and Edward Johnson.

Sandra Bennewitz willfully and maliciously prevented Agwu Nwoke from having possession of the discovery materials in question.

A defendant in a criminal case, needs the relevant discovery materials during the criminal case, and even after the criminal case has been disposed of. A civil suit with regard to prosecutorial misconduct or fabrication of evidence by the police, can not be successfully litigated without access to discovery materials.

Agwu Nwoke's Complaint states a cause of action. Sandra Bennewitz acted under color of State law and deprived Agwu Nwoke of rights secured under 725 ILCS 5/114-13 and Illinois Supreme Court Rule 412(a).

Agwu Nwoke submits that this Court should grant review in this case to reverse the order of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

s/ A. Nwoke

Agwu Nwoke
(Petitioner) .
522 Alcott Lane
Bolingbrook, IL 60440

Phone: 630-679-1567

Date: September 15, 2003

INDEX TO APPENDIX ATTACHED TO THE PETITION FOR WRIT OF CERTIORARI

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

AGWU NWOKE,	) No. 02C 6971
	)
Plaintiff,	) RECEIVED SEP 30, 2002
	)
	) MICHAEL W. DOBBINS
v.	) CLERK, U.S. DISTRICT
	) COURT
	)
SANDRA BENNEWITZ,-	) JUDGE BUCKLO
	) MAGISTRATE JUDGE
Defendant.	) LEVIN

COMPLAINT IN A CIVIL CASE

RELIEF SOUGHT BY PLAINTIFF: $25,000,000.00

The Plaintiff claims as follows:

1. On November 22, 1999, Ms. Sandra Bennewitz, a public defender, was assigned by a Circuit Court of Cook County, Illinois, to represent Agwu Nwoke with respect to Case No. 98 CR 31321, at 2600 S. California Avenue, Chicago, Illinois. Case No. 98 CR 31321 was disposed of on April 16, 2001.

2. On December 27, 2000, Agwu Nwoke attended a meeting at the office of Ms. Sandra Bennewitz located at 2650 S. California Avenue, Chicago. In the course of the meeting, Sandra Bennewitz showed Agwu Nwoke, copies of the following documents, which had been turned over to Sandra Bennewitz by the office of the Illinois State Attorney General, as part of the *discovery* process.

    a) The chart/folder/file of Randy Jones

    b) The chart/folder/file of Edward Johnson

3. On January 03, 2001, Agwu Nwoke wrote a letter by certified mail to Sandra Bennewitz, requesting Sandra Bennewitz to hand over to Agwu Nwoke, photocopies of the charts/folders/files of Randy Jones and Edward Johnson.

4. Ms. Sandra Bennewitz declined to give Agwu Nwoke, photocopies of those documents.

5. On January 22, 2001, Ms. Sandra Bennewitz acknowledged in court that Sandra Bennewitz had possession of the above-mentioned documents. On January 22, 2001, Sandra Bennewitz also acknowledged that Agwu Nwoke had requested for photocopies of those documents.

6. By failing to turn over photocopies of the charts/folders/files of Randy Jones and Edward Johnson, to Agwu Nwoke, Ms. Sandra Bennewitz

flagrantly violated Agwu Nwoke's civil rights pursuant to 42 U.S.C. § 1983.

I, Agwu Nwoke, certify that I am the Plaintiff in the above-entitled action. All the allegations in this complaint are true.

s/ A. Nwoke

Agwu Nwoke

Address: 522 Alcott Lane, Bolingbrook, IL 60440

Phone: 630-679-1567

Date: September 30, 2002

United States District Court
Northern District of Illinois
Eastern Division

Agwu Nwoke **JUDGMENT IN A CIVIL CASE**

v. Case Number: 02 C 6971

Sandra Bennewitz

□ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.

■ Decision by the Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that the case is dismissed for lack of jurisdiction.

Michael W. Dobbins, Clerk of Court

Date: 1/15/2003 s/ Mathew P. John

Mathew P. John, Deputy Clerk

Agwu Nwoke has filed a complaint against Sandra Bennewitz, alleged to be Nwoke's former public defender in a state court action, in which she alleges that the public defender failed to turn over to her copies of certain documents that had been provided her by the government. She alleges that the underlying case was disposed of in April 2001 and that she had requested her public defender to give her the documents (she says they were the "chart/folder/file" of two individuals). Nwoke does not state why defense counsel would not turn over particular documents to defendant but she does indicate that the issue was discussed at a state court hearing. Nwoke says she saw the documents. She alleges no injury as a result of not having the documents. Nor do the facts alleged show any basis for federal jurisdiction. Accordingly, the complaint is dismissed.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 10, 2003
Decided April 23, 2003

Before

Hon. RICHARD A. POSNER, *Circuit Judge*

Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

Hon. ANN CLAIRE WILLIAMS, *Circuit Judge*

AGWU NWOKE, Plaintiff-Appellant,	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 03-1177 v.	)	
	)	No. 02 C 6971
SANDRA BENNEWITZ, Defendant –Appellee.	)	Elaine E. Bucklo, Judge

The following are before the court:

1. MOTION OF DEFENDANT-APPELLEE SANDRA BENNEWITZ TO STRIKE PLAINTIFF-APPELLANT AGWU NWOKE'S BRIEF, filed on March 14, 2003, by counsel for the appellee.

2. RESPONSE OF PLAINTIFF-APPELLANT AGWU NWOKE, TO DEFENDANT-APPELLEE SANDRA BENNEWITZ'S MOTION TO STRIKE THE PLAINTIFF-APPELLANT'S BRIEF, filed on March 19, 2003, by the pro se appellant.

3. DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S BRIEF AND DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S CASE, filed on March 20, 2003, by counsel for the appellee.

4. RESPONSE OF PLAINTIFF-APPELLANT AGWU NWOKE, TO DEFENDANT-APPELLEE SANDRA BENNEWITZ'S MOTION TO DISMISS PLAINTIFF'S CASE, filed on March 27, 2003, by the pro se appellant.

Appeal no. 03-1177

This court has carefully reviewed the final order of the district court and the record on appeal. Based on this review, the court has determined that any issues which could be raised are insubstantial and further briefing would not be helpful to the court's consideration of the issues. *See Mather v. Village of Mundelein*, F.2d 356, 357 (7th Cir. 1989) (per curiam) (court can decide case on motions papers and record where briefing would be a waste of time and no member of the panel desires briefing). Accordingly,

IT IS ORDERED that the district court's order is summarily AFFIRMED.

IT IS FURTHER ORDERED that #1 is denied as unnecessary.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT – CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,

vs.

NWOKE AGWU KALU,
Defendant.

) No. 98 CR 31321

REPORT OF PROCEEDINGS of the hearing before the Honorable Dennis J. Porter, on the 22nd day of January, 2001.

APPEARANCES:

HON. JIM RYAN,
Attorney General of the State of Illinois,
BY: MR. PAUL PASSOLANO,
Assistant Attorney General,
for the People of the State of Illinois;

MS. RITA FRY,
Public Defender of Cook County,
BY: MS. SANDRA BENNEWITZ,
Assistant Public Defender,
for the Defendant.

Renia A. Boykin, CSR
Official Court Reporter
2650 South California Avenue, Room 4C02
Chicago, Illinois 60608
(773) 869-6065

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MS. PASSOLANO: Paul Passolano, P-a-s-s-o-l-a-n-o, Assistant Attorney General.
THE COURT: Is this for jury?
MS. BENNEWITZ: No, reset for status. I don't know if you recall that at the last court date, there was a discussion. I had been told by Mr. Morrisey from our office, of the existence of the conflict and that I should ask to be relieved. Remember the case was advanced and I was released from the case and the Court indicated that a multiple defendant attorney should appear.
THE COURT: Right
MS. BENNEWITZ: It is my understanding that no multiple defendant attorney, personally, had appeared because by virtue of their definition, there is no multiple defendant and since there is no multiple defendant, they do not believe it's within their province and in the --
THE COURT: What is the nature of the conflict again?
MS. BENNEWITZ: The nature of the conflict is representation of a witness who was represented -- actually, she's an unindicted co-conspirator who was represented and remains represented by an attorney who used to be my partner, Mr. Smith.
THE COURT: That's right. That's why you have to

withdraw. Where is he assigned now?

MS. BENNEWITZ: He may be in Judge Lampkin's court. I'm not sure

In any event, the matter is back before your Honor. There will be no multiple defendant attorney on this case, and I have explained the matter to our client with regard to the conflict of interest, and he is unwilling to waive the conflict of interest within the Public Defender's office and is requesting a new attorney.

THE COURT: Okay. He can have a new attorney, but you can only have a new attorney from the Public Defender's office. I don't see any reason to give you an attorney from somewhere else.

What -- why -- how many attorneys are there in the Public Defender's office?

MS. BENNEWITZ: I believe there are over 500.

THE COURT: And you can't get an attorney that doesn't either know you or Smith or this witness that has nothing to do with a witness?

MS. BENNEWITZ: Mr. Smith and I are very well known, your Honor.

THE COURT: I am sure. Don't give me that.

There's absolutely no reason why you can't get what this multiple -- I don't care what you call it. What it's for is for cases where there is a conflict.

MS. BENNEWITZ: Well, apparently, I have been told to say, oh, to the contrary. And I would ask that the messenger not be shot here, your Honor. Multiple defendants would be -- would be when there is an 01, 02, 03.

THE COURT: I understand the concept I believe. But what I don't see is the necessity for hiring an attorney on this situation. I can see why you could not represent the person, or Mr. Smith could not represent the person, but why somebody who has no connection with you or either Mr. Smith could not represent Mr. Nwoke is just utterly beyond me quite frankly.

MS. BENNEWITZ: I would pass that on and I would be --

THE COURT: Have them come down here and I will pass it on to them myself.

MS. BENNEWITZ: I don't know who I would call at this point. I guess my supervisor.

THE COURT: Your supervisor.

MS BENNEWITZ: Shall I?

THE COURT: Yeah, and tell them my order. I want somebody from the Public Defender's office to represent Mr. Nwoke, unless you want to hire your own lawyer.

THE DEFENDANT: Can I say something your Honor?

THE COURT: You may.

THE DEFENDANT: I wish Ms Bennewitz to continue representing me because she knows a lot about the case and if I get another attorney, he will start all over again, and I was already in October of 1999, so I will continue with this.

THE COURT: You want Ms. Bennewitz? Do you understand what she is saying here?

Do you understand?

THE DEFENDANT: I understand.

THE COURT: She is saying a person with whom she used to work, this Mr. Smith, but who no longer works with you, in any capacity, you are not on any cases together and he is in a different court room; right?

MS. BENNEWITZ: True.

THE COURT: So, you have as much connection with him right now as you have with the Assistant Public Defender in Judge Suria or as much connection with him

right now as the Assistant Public Defender who works over in the 5th Municipal District; right?

MS. BENNEWITZ: I wouldn't say that necessarily. I do chat with Mr. Smith with great frequency.

THE COURT: Is this on a social basis?

MS. BENNEWITZ: No, on a professional basis, and specifically since I was on this matter last time I have had extensive conversation with him with regards to his representation of that witness, but whatever the Court suggestions.

THE COURT: Well, it's -- I think this isn't an absolute conflict because -- it would be for Mr. Smith, but not for you.

So she says that she has some knowledge about Mr. Smith's representation of somebody else who is supposedly an unindicted co-conspirator. They are not a witness in this case -- they are a witness in this case, okay, who is going to be a witness in this case.

You feel that you could -- as far your representation of Mr. Nwoke, there is nothing that you feel would prevent you from doing that other than just what you brought to the Court's attention?

MS. BENNEWITZ: That's correct, unless it got into

a position -- I think we would need to inquire of the Assistant Attorney General whether or not a deal was made between Ms. Webb and the Attorney General's office

because depending on their answer, and, therefore, depending on the answers of Ms. Webb, there is -- it is conceivable that Mr. Smith would be a witness.

THE COURT: Is there?

MR. PASSOLANO: I am not aware of any deal, and I am still searching the massive file looking for the needle in the haystack of some type of proffer that was made, and I have not found a written proffer and it's my understanding that she was never indicted. She was a target at one time. She asked for a counsel in front of the Grand Jury, counsel was appointed and that's as far as it went. I think it was trying to secure her testimony. So there was no, as far as I know, there's no -- agreement with this Webb, Janice Webb.

THE COURT: All right. It seems to me that there is not an absolute conflict as far as you representing this person. Have you checked with --

MR. PASSOLANO: But before that's etched in stone, your Honor, I would like to talk to –

THE COURT: Mr. Smith?

MR. PASSOLANO: Not only Mr. Smith, but the attorney who handled this case before I got it, the one who essentially entered into this proffer relationship. I haven't been able to talk to, John O'Connell. I am going to call him this afternoon and see if I can get an answer to that question. I was looking for the file today. If I can actually sit down and talk to him, I don't want to misrepresent anything to the Court. I have -- I am not aware of anything, based on what I have looked at through the file, as to any type of plea -- or agreement between the two.

MS. BENNEWITZ: And Mr. Smith would say to the contrary.

THE COURT: You said there is an agreement?

MS. BENNEWITZ: There is, that there was.

THE COURT: Well I still think it's not an absolute conflict.

If you want -- Mr. Nwoke, if you want Ms. Bennewitz to represent you, then she's going to represent you.

THE DEFENDANT: Yes.

THE COURT: But you have to understand that what she is saying is --

THE DEFENDANT: I understand.

THE COURT: -- if this witness testifies, Webb --
MR. PASSOLANO: Janice Webb.
THE COURT: -- and if she testifies that there's an agreement, and the State's position is that there is none, then her lawyer, this Smith -- Mr. Smith --
MS. BENNEWITZ: Stuart Smith.
THE COURT: Stuart Smith?
MS. BENNEWITZ: Yes.
THE COURT: Would be called to testify, and Ms. Bennewitz would be in a position to cross examine this Public Defender from the Public Defender's office, and Ms. Bennewitz knows Mr. Smith and used to work with him. I am sure Ms. Bennewitz would do the best job she can, but it might make her fell uncomfortable and go a little easy on him because of her past relationship with him. I am sure she will not do that, to the best of her utmost ability. But in any event, if it looks like it might likely -- there would be a conflict which would entitle you to another lawyer other than Ms. Bennewitz, if you want to go with Ms. Bennewitz, you can. What I'm

going to do is pass the case for a couple of minutes and let you talk to Ms. Bennewitz and you can decide what you want to do.

MS. BENNEWITZ: We have talked.

THE DEFENDANT: I have talked. I told her I want her to continue.

THE COURT: You want her to continue?

THE DEFENDANT: Yes.

MS. BENNEWITZ: Also, on his behalf as well --

THE COURT: You can continue.

MS. BENNEWITZ: -- he is making a request for certain medical records that are going to be used.

MR. PASSOLANO: We responded to everything that Ms. Bennewitz had asked for in the past.

MS. BENNEWITZ: We have them. I am not saying we don't. He is asking for copies himself. I had explained the Supreme Court Rule. I thought perhaps the Court might as well.

THE COURT: The stuff is for -- the discovery is for your lawyer, not for you. So, no, she can't give you that. She can talk -- she will talk about it with you and everything, but she can't give it to you.

THE DEFENDANT: Can I say one thing?
THE COURT: What?
THE DEFENDANT: I asked for photocopies, not originals.
THE COURT: For –
MS. BENNEWITZ: Photocopies.
THE COURT: That's what I am telling you, she is not going to give them.
MS. BENNEWITZ: We has photocopies as well.

THE COURT: She will talk about it, but you are not going to get copies.
THE DEFENDANT: Okay.
THE COURT: Now you want it set for what, back for a jury trial?
MS. BENNEWITZ: Yes.
THE COURT: How many witnesses on this?
MR. PASSOLANO: Ten.
THE COURT: How many do you think for the Defense?
MS. BENNEWITZ: Probably one or two.
THE COURT: So you are thinking three days, maybe, testimony; is that about right?
MR. PASSOLANO: Sure.
THE COURT: How about the 20th of February or –
MS. BENNEWITZ: Your Honor –

THE COURT: Or the 26th?
MS. BENNEWITZ: I can do neither date. I am going to be out of town.
THE COURT: When are you going to come back?
MS. BENNEWITZ: I am getting back on -- actually, I will be back on the 7th.
THE COURT: The 7th. I have got Koslowski set on the 6th.
MS. BENNEWITZ: Oh, right.

THE COURT: How about the week after, what does that look like?
MS. BENNEWITZ: I have Smith, double jury. I have a criminal drug conspiracy case that's going to trial with multiple defendants on the 19th.
THE COURT: How about, this is older than Koslowski, you want to do it instead of Koslowski on the 6th?
MS. BENNEWITZ: I won't be here on the 6th.
THE COURT: How about the -- the 7th?
MS. BENNEWITZ: Sure, your Honor. Okay, that's fine.

THE COURT: By agreement, March 7th, that will be your next court date.

MS. BENNEWITZ: With for jury, correct?

THE DEFENDANT: Yes.

MR. PASSOLANO: The subpoenas that State has already served on it's witnesses will be entered and continued.

THE COURT: Yes, that will be continued until March 7. You will have to inform them. Okay. That will be your next court date.

(Whereupon, the above-entitled cause was continued to March 7, 2001.)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRIMINAL DIVISION

I, Renia A. Boykin, Official Court Reporter for the Circuit Court of Cook County, County Department-Criminal Division, do hereby certify that I reported in shorthand the proceedings had on the hearing in the above-entitled cause; that I thereafter transcribed the foregoing into typewriting, which I hereby certify to be a true and accurate transcript of the proceedings had before the Honorable Dennis J. Porter, judge of said court.

s/ Renia A Boykin
Renia A Boykin, CSR
No. 084-004013